THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.19374 OF 2006

ORDER:

This writ petition is filed seeking a declaration that the order of the 1st respondent-Commissioner of Prohibition and Excise, Hyderabad, dated 7.9.2006, cancelling the prior clearance granted in favour of the petitioner is arbitrary and illegal.

The facts, in brief, are as under:

The petitioner made an application for grant of a licence in Form 2-B for running a Bar & Restaurant under the provisions of Andhra Pradesh Excise (Grant of Licence of Selling by Bar and Conditions of Licence) Rules, 2005 (for short "the Rules") for the year 2006-07 in the name and style of M/s Saptagiri Bar & Restaurant. The petitioner had proposed to locate the said Bar & Restaurant at premises bearing door No.28/1663, Venkateswarapuram, Nellore. It is not in dispute that the petitioner was running a Bar & Restaurant in the same premises from the year 1996-97 onwards under valid licence granted from time to time.

Pursuant to the application made by the petitioner for grant of licence for the year 2006-07, the Deputy Commissioner of Prohibition and Excise, Nellore, having conducted necessary enquiry, submitted a report dated 31.7.2006, and on the basis of the same, the Commissioner of Prohibition and Excise granted prior clearance vide proceedings dated 7.8.2006 for grant of Form 2-B licence in favour of the petitioner. In pursuance thereof, though the petitioner had complied with all statutory requirements and remitted the prescribed fees, no further steps were taken and the licence as sought by the petitioner was not granted. Aggrieved by the said inaction of the respondents, the petitioner earlier filed W.P.No.17369 of 2006 seeking a direction to the licensing authority to grant licence pursuant to the prior clearance dated 7.8.2006. This Court, having taken note of the fact that the Deputy Commissioner of Prohibition and Excise had

addressed a letter dated 25.8.2006 requesting to reject the prior clearance granted earlier and having regard to the settled legal position that prior clearance does not confer any right for grant of licence, disposed of the writ petition by order dated 5.9.2006, leaving it open to the respondents to take appropriate action in accordance with law and communicate the same to the petitioner.

In the meanwhile, the impugned order dated 7.9.2006 came to be passed by the 1st respondent cancelling the prior clearance dated 7.8.2006 on the ground that the proposed premises attracts Rule 6(1)(ii) of the Rules, as reported by the Deputy Commissioner of Prohibition and Excise in his letter dated 25.8.2006. Hence, this writ petition seeking a declaration that the order passed by the 1st respondent dated 7.9.2006 is arbitrary and illegal.

I have heard the learned counsel for both the parties and perused the material on record.

The learned counsel for the petitioner vehemently contended that having granted the prior clearance, the 1st respondent is not vested with any power to rescind the prior clearance without any notice to the petitioner. It is also contended that since the prior clearance was granted on being satisfied on the basis of the report of the 2nd respondent dated 31.7.2006 that the distance between the temple and the proposed Bar & Restaurant, when measured perpendicularly in Z shape is 101 meters, there is absolutely no justifiable reason to take a different opinion without affording an opportunity to the petitioner to contradict the subsequent report dated 25.8.2006. It is also contended that since the petitioner-Bar has been in existence in the very same premises from the year 1996-97, the objection raised in the impugned order that it attract Rule 6(1)(ii) is untenable.

In the counter-affidavit filed on behalf of the respondents, it is stated that the Station House Officer, Nellore and the Assistant

Prohibition & Excise Superintendent, Nellore, had measured the distance and reported that the proposed premises is not in accordance with the instructions of the Commissioner dated 1.7.2006 as the premises is situated within 100 mts. to the temple situated at Venkateswarapuram. The distance, as per their report, was measured from the mid point of the entrance of the premises along with nearest path by which the pedestrians ordinarily reach to the mid point of the main gate of the temple strictly in accordance with Rule 6(1)(ii) of the Rules and, therefore, the 1st respondent had rightly cancelled the prior clearance.

However, the learned counsel for the petitioner while referring to the report of the Deputy Commissioner of Prohibition and Excise dated 31.7.2006, pointed out that the distance between the temple and the entrance of the proposed premises, if measured perpendicularly in Z shape, would come to 101 mts., and when measured diagonally on straight line, it would be 80.40 mts. The learned counsel contended that for the purpose of Rule 6(1)(ii), the respondents ought to have taken into consideration the distance measured in perpendicularly Z shape as is being done in respect of all Form B-2 licenses in the State.

In the affidavit filed in support of the writ petition it has been specifically pleaded by the petitioner that so far as 9 Bars situated in Nellore, if the distance is measured diagonally in straight line, it would be less than 100 mts., attracting the prohibition under Rule 6(1) (ii). In paragraph 10 of the affidavit the petitioner has mentioned the names of the said Bars and the respective distances if measured diagonally from the educational institutions, hospitals and temples. It is also asserted that not only the said 9 Bars in Nellore, but also in respect of Bars in the entire State the distance is being measured perpendicularly in Z shape. Thus, it is contended that if the same procedure is followed in respect of the proposed premises, since it is 101 mts, the petitioner is entitled for licence.

The said allegation made by the petitioner has not been

specifically explained by the respondents in their counter-affidavit, except stating that 9 Bars in Nellore Municipal Corporation were granted licenses after measuring the distance as per the explanation of Rule 6 of the Rules. Explanation to Rule 6(1) of the Rules with regard to measuring of distance perpendicular is as under.

> **"The distance referred above shall be measured from the mid-point of the entrance of the proposed Bar premises along with the nearest path by which pedestrian ordinarily reaches to the mid-point of the nearest gate of the institution or a place of public worship, if there is a compound wall and if there is no compound wall to the mid-point of the nearest entrance of the institution/place of public worship or to the entrance of the first house of the predominantly residential area."**

The above Rule does not mention whether the distance has to be measured diagonally on straight line or perpendicularly. However, having regard to the specific assertion made by the petitioner that the respondents have been consistently following the method of measuring the distance perpendicularly, but singled out the petitioner by measuring the distance diagonally on straight line, I am of the opinion that the petitioner's case requires reconsideration by the 1st respondent- Commissioner of Prohibition and Excise, after calling for necessary reports from all the concerned and after causing a spot inspection by independent officials, in the presence of the petitioner.

Accordingly, the writ petition is disposed of with a direction to the 1st respondent to cause a fresh enquiry as indicated above, taking into consideration the procedure adopted in measuring the distance in case of other licenses in the State, and pass appropriate orders in accordance with law as expeditiously as possible, preferably within a period of three weeks from the date of receipt of a copy of this order. Basing on such order the impugned order dated 7.9.2006 shall be reviewed and fresh order be communicated to the petitioner. No costs.

(G. ROHINI, J.)

3rd November, 2006.

Issue CC by Monday.
Kgr

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.19374 OF 2006

3rd November, 2006.

Between:

M/s Saptagiri Bar & Restaurant,
Dr.No.28/1663, Venkateswarapuram,
Nellore, Nellore District, represented by its
Proprietor – M. Dinesh. .. Petitioner.

And

The Commissioner of Prohibition and Excise,
Hyderabad and others. .. Respondents.